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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

NO. 81-6512

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SUPREME COURT, U.S.

ROBERT ALTON HARRIS,
Petitioner,

v.

STATE OF CALIFORNIA,
Respondent.

REPLY TO OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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ARGUMENT

THE PETITION FOR WRIT OF CERTIOPARI WAS FILED IN A TIMELY FASHION

While this reply may be unnecessary because of the action of the Clerk of this Court in filing the petition for writ of certiorari in this case, it is offered because the underlying judgment attacked in the petition is one imposing the death penalty.

Respondent contends in his opposition that Rule 20.1 of the Rules of this Court requires that a petition for writ of certiorari be filed within sixty days of the order of the state's highest court [Opposition page 2]. He asserts that since the order denying petitioner's application for writ of habeas corpus in the California Supreme Court was January 13, 1982, his petition filed in this court on April 12, 1982, was

almost a month late. Respondent, however, has apparently misread the Rules of this Court. Rule 20.1 addresses only the time limit for filing petitions for writ of certiorari in criminal cases. Since the instant petition is from the denial of habeas corpus relief by the California Supreme Court, an action deemed civil in nature, the applicable time limit for the filing of such a petition is contained in 28 U.S.C. §2101(c). That statute specifically indicates that petitions for writ of certiorari from civil judgments must be filed within ninety days of the entry of the order denying relief as to which reveiw is sought. Thus, the petition was filed in a timely fashion.

It is petitioner's understanding that this Court treats habeas corpus petitions as being civil in nature. There are sound policy reasons for this as it relieves the Court of the enormous burden of researching the law of each state to determine the manner in which the state treats such petitions.[1/]

However, if petitioner's counsel has erred in interpreting the applicable rules and has filed his petition in a tardy manner, he requests the Court to disregard the error in the interests of justice. The sixty day time limit is not jurisdictional and does not bar this Court's exercise of discretion to consider

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1. For example, although petitions for writ of habeas corpus in California are frequently filed in collateral attacks upon criminal judgments, the use of the petition is not limited to criminal cases. See, e.g., In Re Michael E., 15 Cal.3d 183 (1975), [Determination of rights of prisoners]; In Re van Geldern, 5 Cal. 3d 832 (1971), [Inmate-author's right to royalties]. Moreover, the California Supreme Court has noted in In Re Saunders, 2 Cal. 3d 1033, 1047 (1970):

> "The traverse, and the petition, where . . . it is treated as a traverse [citation], are analogous to the answer in a civil proceeding . . . ."

Thus, the pronouncements of the California Supreme Court are not crystal clear in this area. This Court should and does control its own docket. For this reason alone the action of the Clerk in filing the petition should not be overturned.

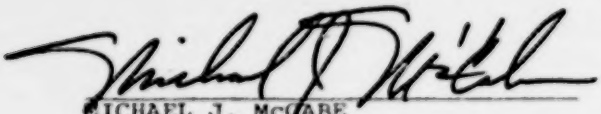
the case. See Taglianetti v. United States, 394 U.S. 316 n.1, cited in Stern & Gressman, Supreme Court Practice (5th Ed. 1978) pp. 390-391.

* * * * * * * * *

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari in the above-entitled case was filed in a timely fashion.

Respectfully submitted,



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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

AFFIDAVIT OF SERVICE BY MAIL
No. 81-6512
ROBERT ALTON HARRIS v.
CALIFORNIA

MICHAEL J. McCABE, being duly sworn, deposes and says: That affiant is over the age of 18 years, and not a party to the within action; that affiant's place of employment and business address is 108 Ivy Street, San Diego, California 92101; that on the 24th day of May, 1982, affiant enclosed one true copy of the within REPLY TO OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA; an original and 10 copies to Michael Rodak, Jr., Clerk, U. S. Supreme Court, Washington, D. C. 20543 in an envelope for each of the persons named below, addressed to each of them at the address set out immediately below each respective name, sealed said envelope, and deposited same in the United States Mail at the City of San Diego, County of San Diego, State of California, with postage thereon fully prepaid; that there is delivery service by United States mail at each of the places so addressed, or there is regular communication by mail between the said place of mailing and each of the places so addressed.

That all parties required to be served have been served as shown below:

Michael D. Wellington
Deputy Attorney General
Office of George Deukmejian
Attorney General of California
110 West A Street, Suite 700
San Diego, California 92101

Laurence P. Gill, Clerk
California Supreme Court
350 McAllister St. Rm. 4050
San Francisco, CA 94102

Michael J. McCabe

Subscribed and sworn to before me
this 24th day of May, 1982.

Alice Elinor Tumminia
ALICE ELINOR TUMMINIA
Notary Public

OFFICIAL SEAL
ALICE ELINOR TUMMINIA
NOTARY PUBLIC - CALIFORNIA
Principal Office in San Diego County
My Commission Exp. Aug. 6, 1982